

REMARKS

Claims 1-46 are pending in the Application.

Claims 1-46 stand rejected.

I. CLAIM OBJECTIONS

Claim 30 stands objected to because of an informality. Applicants have amended claim 30 to correct a typographical error in the spelling of the word "within." Applicants respectfully assert that the amendment to claim 30, and incorporated by reference in any claims depending therefrom, is not a narrowing amendment made for a reason related to the statutory requirements for a patent that will give rise to prosecution history estoppel.

II. REJECTIONS UNDER 35 U.S.C. § 112

Claims 8-13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. More specifically, the Examiner has stated:

Claims 8-13 are objected because according to claim 8, it is not clear for the throttling circuitry in the telephone to reduce a future amount of data from being transferred from the first network device while the amount of data addressed to and received by the first telephony device falls below a predetermined threshold. Examiner will examines [sic] claims 8-13 in the next office action with applicant's explanation.

Unfortunately, Applicants are unclear exactly what the Examiner is stating or questioning with the above paragraph. The monitoring circuitry monitors the amount of data received by the telephone device. If this amount of data falls below the threshold, then the throttling circuitry reduces the future data transfer. Applicants hope that this response addresses the Examiner's concerns.

### III. DOUBLE PATENTING REJECTION

Claims 1, 16 and 30 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8, 38 and 57 of co-pending Application No. 09/775,018. Since neither that patent application or the present application have been allowed, Applicants respectfully defer responding to this provisional double patenting rejection.

### IV. REJECTION UNDER 35 U.S.C. § 103

Claims 1-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schuster et al.* (U.S. Patent No. 6,650,619) in view of *O'Mahony* (U.S. Patent No. 5,878,120). In response, Applicants respectfully traverse these rejections.

Claim 1 specifically recites a first network device coupled to the modem through the first telephony device, wherein the first telephony device includes first circuitry for throttling data sent from the first network device. The two cited references do not teach or suggest a telephony device coupling a network device to a modem. In *Schuster*, the network device and telephony device are separately connected to the PSTN.

Further, there is no need for throttling data sent from the first network device in *Schuster*. Thus, contrary to the rejection, there is no need to apply teachings of *O'Mahony* into *Schuster*.

Contrary to the rejection's citation of language in columns 13 and 14 of *Schuster*, *Schuster* does not teach throttling data sent from a first network device, wherein such throttling circuitry is included within a telephony device coupled between the first network device and a modem. Instead, *Schuster* merely discloses a reduction in signaling workload at a gateway device. *O'Mahony* may disclose a modem within a DCE, but it does not discuss throttling an amount of data being received, but instead will turn off a transference through the modem of non-voice data in favor of voice data.

As a result, there is no teaching or even a suggestion within the cited art of the specific configuration of the system recited in claim 1 where the first network device is coupled to the modem through the first telephony device, wherein the first telephony

device includes throttling circuitry. One skilled in the art at the time the invention was made would not have been able to recreate the invention specifically recited in claim 1 in view of *O'Mahony* and *Schuster*. Instead, the most that the two references might suggest would be to suspend within gateway 12 the transmission to the network 22 of non-voice data from computer 24 in favor of voice data from telephony device 26. Again, however, this configuration is not the same as what is specifically recited within claim 1. Since all of the limitations of the claim are not met by the combination of the prior art references, a *prima facie* case of obviousness has not been proven.

Claim 35 is patentable for reasons similarly given above with respect to claim 1. Claim 35 further recites that the first network device is coupled to the first modem via the first IP telephone so that data communicated between the first network device and the first modem is switched through the first IP telephone. Clearly this configuration is not taught or suggested within either of the cited prior art references. Data from computer 24 is not switched through IP telephone 26 in *Schuster*. Furthermore, gateway 12 is not an IP telephone, and thus the assertions as to how *Schuster* teaches or suggests the configuration of the claim are in error.

In fact, the Office Action appears to be asserting that the rejection of claim 1 mostly applies to the rejection of the recitations in claim 35. However, claim 35 is significantly different than claim 1, and the incorporation of the rejection of claim 1 into the rejection of claim 35 does not adequately address the specific recitations of claim 35. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claim 35.

Claims 16 and 22 are patentable for reasons similarly given above with respect to claims 1 and 35.

With respect to claim 30, Applicants respectfully traverse the assertion that a microphone is an input data port. The rejection is taking an unreasonably broad interpretation of the term "data." Audio waves received by a microphone are not data, and furthermore, are clearly not "addressed for transmission to a location other than the telephony device through an output port on the telephony device." When a microphone

picks up audio waves, it is merely because the microphone is in the vicinity of the source of the audio waves.

Furthermore, a jitter buffer is not inherent in a PC memory. Inherency may not be established by probabilities or possibilities. MPEP § 2112. In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art. *Id.* The rejection fails to adhere to the standards in MPEP § 2112.

Furthermore, rejection of claim 30 does not make logical sense, since it implies that voice data is throttled so that voice data can be transmitted in real time from PC 24. However, the Examiner is reminded that claim 30 is reciting that all the limitations are comprised within the telephony device.

With respect to claims 31 and 34, the Office Action asserts that the jitter bugger is inherent in the rejection of claim 30; now, the Office Action admits that *Schuster* does not disclose a jitter buffer. The Examiner cannot have it both ways by asserting with respect to the claim 30 that *Schuster* in PC 24 teaches that there is a jitter buffer, and then in the rejections of claims 31 and 34 admit that *Schuster* does not have a jitter buffer. Furthermore, buffers 920 and 922 are not jitter buffers; asserting otherwise is ignoring the term “jitter.”

With respect to claims 20 and 21, nowhere is it disclosed or suggested within the cited prior art that management system 90 in *Schuster* monitors an amount of audio information received by the telephone. System 90 is not disclosed anywhere to occur within a jitter buffer. The limitations have not been met by the rejection. As a result, one skilled in the art at the time the invention was made would not have been able to recreate the invention specifically recited in claims 20 and 21, since important limitations are not met by the combination of the cited prior art.

With respect to claims 26 and 32, the Office Action has not explained how the recited language equates to level 2 switching circuitry. There is not even a mention of

level 2 switching within either of the cited prior art references. As a result, the Office Action has failed to prove a *prima facie* case of obviousness in rejecting these claims.

Claims 2, 29 and 38 specifically recite a router coupled between the first telephone device and the modem, or as with respect to claim 38, a router coupling the first IP telephone to the first modem. The rejection glosses over this specific structural relationship by pointing to the router 64 in Fig. 1 of *Schuster* as being coupled to telephone 26. The rejection then asserts that “it would have been obvious to couple the router between the telephone device and the modem in the *Shuster et al.* [sic].” Such an obviousness assertion is without any objective support, which is required under the case law. Nothing in the prior art suggests coupling a router between the telephone device and the modem.

With respect to claims 7, 19, 23 and 24, Applicants respectfully assert that *Schuster* does not disclose that throttling circuitry is included in the telephony device.

Furthermore, the rejection has ignored significant claim limitations in claim 24. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejection claim 24.

With respect to claim 14, Applicants respectfully assert that there are claim limitations in claim 14 that are not addressed in the rejection of claim 1. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claim 14.

In the rejection of claims 25 and 27, the Examiner has asserted that *Schuster* discloses the network device equates to PC 24 and the telephone device equates to telephone 26. If this is so, then clearly *Schuster* does not disclose or suggest the specific limitations where the data is addressed for transmission from the network device through the telephony device to the wide area network via the modem.

V. CONCLUSION

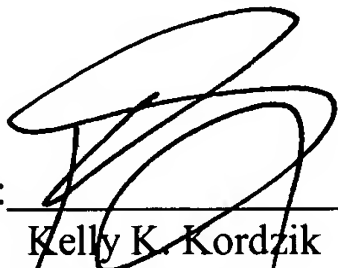
As a result of the foregoing, it is asserted by Applicants that the remaining Claims in the Application are in condition for allowance, and respectfully request an early allowance of such Claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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